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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**W.P.(S) No.2859 of 2007**

**PETITIONER** : R.N. Dewangan, S/o Late Shri Y.K. Dewangan, Aged about 50 years, R/o Block Colony Marwahi, District Bilaspur (C.G.)

versus

**RESPONDENTS**

1. State of Chhattisgarh – Through the Secretary, Rural Engineering Services Department, D.K.S. Bhawan, Raipur (C.G.)
2. The Collector Bilaspur – cum – District Mission Director, Rajiv Gandhi Shiksha Mission, Sarva Shiksha Abhiyan, Bilaspur (C.G.)
3. The Chief Executive Officer, Zila Panchayat, Bilaspur (C.G.)

(Writ Petition under Article 226 of the Constitution of India.)

**Single Bench : Hon'ble Shri Satish K. Agnihotri, J.**

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Present : Shri P. Diwakar, Senior Advocate with Shri K.S. Pawar, Advocate for the petitioner.
Shri Yashwant Singh Thakur, Govt. Advocate for the respondents.

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**ORAL ORDER**
**(Passed on 9th May, 2007)**

By this petition, the petitioner has challenged the impugned suspension order dated 28.04.2007 (Annexure P/2). The petitioner was working as Sub Divisional Officer, Rural Engineering Services, Pendra, district – Bilaspur, when the impugned suspension order was passed.

2. On perusal of the suspension order, it appears that the petitioner has been placed under suspension on account of alleged wrong valuation of the cost of construction work, under the Sarve Shiksha Abhiyan in Primary School, Gullidand, Block – Marwahi, whereby he

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has caused financial loss to the Government, as well as committed dereliction of duties and irregularities in Government work.

3. Learned counsel appearing for the petitioner impugns the order dated 28.04.07 on three grounds. Firstly, in the impugned suspension order there is no mention of contemplation of inquiry. Secondly, the officer passing the suspension order is not the disciplinary authority. Lastly, the officer passing the impugned order is not empowered in that behalf by the Governor. Rule 9 of the Chhattisgarh Civil Services (Classification, Control & Appeal), 1966 reads as under:

> "9 (1)The appointing authority or any authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order, may place a Government servant under suspension –
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> (a) where a disciplinary proceeding against him is contemplated or is pending, or
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> (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:
>
> [Provided that a Government Servant shall invariably be place under suspension when a challan for a criminal offence involving corruption or other moral turpitude is filed against him:]
>
> Provided further that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

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(2) A Government servant shall be deemed to have been place under suspension by an order of appointing authority –

(a) with effect from the date of his detention, if he is detained in custody whether on a criminal charge or otherwise for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction, if, in the event of conviction for an offence, he is sentences to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

**Explanation.** – The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

[(2-a) Where a Government servant is placed under suspension under clause (a) of sub-rule (1), the order of suspension shall contain the reasons for making such order and where it is proposed to hold an enquiry against such Government servant under rule 14, a copy of the articles of charges, the statement of imputations of misconduct or misbehavior and a list of documents and witnesses by which each article of charge is proposed to be sustained shall be issued or caused to be issued by the disciplinary authority to such Government servant as required by sub-rule (4) of Rule 14, within a period of 45 days from the date of order of suspension:

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Provided that where the disciplinary authority is the State Government, the copy of charges and other documents mentioned above shall be issued or caused to be issued to such Government servant within a period of 90 days from the date of order of suspension].

(2-b) Where the disciplinary authority fails to issue to the Government servant, a copy of the charges and other documents referred to in sub-rule (2-a) within the period of 45 days, the disciplinary authority shall, before expiry of the said period, obtain orders in writing of the State Government for extension of the said period of suspension:

Provided that the period of suspension shall in no case be enhanced beyond a period of 90 days from the date of the order of suspension.

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx"

4. Reading of the provisions of Rule 9 makes it clear that any authority subordinate to the disciplinary authority or any other authority which is not in the channel of service, empowered on behalf of the Governor by general or special order, can place an employee on suspension. Other authority empowered by the Governor means not the authority in the channel of service of the petitioner or in deputation but other authority who has nothing to do with the functioning of the employee. Learned counsel, except making the bald statement, has not produced any other relevant document in support of his contention

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to establish the fact that the authority who has passed the suspension order was not dealing with the functioning of the employee and he was not empowered by the Governor by special or general order.

5. It is further provided in second proviso to Rule 9 (1) that where the order of suspension is made by any authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order is made.

6. In the case of State of Mysore Vs. M.H. Bellary, reported in AIR 1965 SC 868 and in Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti and Others, reported in AIR 1989 SC 341, question of termination was under consideration involving punishment with civil consequences. The Supreme Court in P.L. Shah Vs. Union of India, reported in AIR 1989 SC 985 has considered the nature of suspension and held as under:

> "An order of suspension is not an order imposing punishment on a person found to be guilty. It is an order made against him before he is found guilty to ensure smooth disposal of the proceedings initiated against him. Such proceedings should be completed expeditiously in the public interest and also in the interest and also in the interest of the Government servant concerned. xxx xxx xxx"

It is well settled principle of law that the suspension is temporary and it does not involve punishment with civil consequences. Suspension means a temporary deprivation of the functions not

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amounting to any reduction of his rank or his status. The employee under suspension continues to be a Government Servant, he is not permitted to work keeping in view pendency of departmental enquiry to avoid undue influence in the proceedings of departmental enquiry and likely tampering with on records. At this stage it in not necessary to go into the charges leveled against the petitioner because it may prejudice the case of the parties wherein the respondents are likely to initiate the departmental enquiry".

7. The impugned order clearly states that order of the suspension was reported to all the officers including the appointing authority vide (Annexure P/2) dated 28.04.07.

8. In the present case, the Chief Executive Officer Janpand Panchayat, Bilaspur has passed an order, which was approved by the Collector and District Mission Director. With regard to mentioning of contemplation of inquiry in the suspension order, the irregularities purportedly committed by the petitioner have been stated in the impugned suspension order, which clearly indicate that the inquiry was under contemplation. Rule 9 (2-a) and (2-b) take care of such situation where the enquiry has not been initiated within the 45 or 90 days, as the case may be.

9. Reliance of learned counsel on the order 22.06.06 passed by Writ Petition No.2918 of 2006 (V.K. Kesharwani Vs. State of Chhattisgarh and another). This Court has, in the order granting relief, observed that while passing the suspension order, there should be a clear statement that there is proposed inquiry under contemplation. The petitioner has

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not produced a copy of the final order, if any, passed in W.P. No.2918 of 2006.

10. As a result and for forgoing reasons, this petition is dismissed.

**Sd/-**
**Satish K. Agnihotri**
**Judge**

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